

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**BOARD OF ZONING ADJUSTMENT**



Application No. 13005, of Bakers Local Union No. 118, pursuant to Sub-section 8207.2 of the Zoning Regulations, for a special exception under Sub-paragraph 3101.410 to continue accessory parking in an R-1-B District at the premises 2706 Bladensburg Road, N.E., (Square 4345, Lot 7).

HEARING DATE: April 21, 1982  
DECISION DATE: May 5, 1982

FINDINGS OF FACT:

1. Lot 7 in Square 4345, the subject lot herein, is located on the north side of Evarts Street between 30th Street and Bladensburg Road, N.E. The subject lot is located to the west of an office building on Lot 8 for which it provides accessory parking. Both lots are known as 2706 Bladensburg Road, N.E. Lot 7 is in an R-1-B District and Lot 8 is in a C-2-A District.

2. In BZA Order No. 10476, dated November 16, 1970, the Board first approved the subject lot as accessory parking for the applicant's office building. In BZA Order No. 11592, dated June 25, 1974, the Board granted the continued use of the subject lot for a period of five years. In the previous BZA Order No. 13005, dated March 17, 1980, the Board denied the continuance of accessory parking on the subject lot.

3. In Bakers Local Union No. 118 v. District of Columbia Board of Zoning Adjustment, 437 A.2d 176 (1981), the District of Columbia Court of Appeals reversed the Order of the Board in Application No. 13005, and remanded the case to the Board for a new hearing consistent with the Court's Order. The majority opinion held that the Board did not address the "issues and concerns" of the ANC in the manner required by statute and that the Board's findings and conclusions lacked support of substantial evidence.

4. The application was heard de novo at the public hearing of April 21, 1982.

5. The subject site, lots 7 and 8, are approximately 12,708 square feet in area. Lot 7 is within thirty-five

feet of the office building to which it is accessory. Lot 7 has parking facilities for fifteen automobiles.

6. The frontage of property along Bladensburg Road, N.E. at the subject location is strip zoned. The depth of the C-2-A zone is fifteen feet along Evarts Street, N.E.

7. Both lots 7 and 8 are of restrictive size and the adjacent property to the north is in adverse ownership and unavailable for off-street parking.

8. The intersection of Evarts Street and Bladensburg Road, N.E. forms an irregular angle at the subject property, which gives an unusual shape to lot 8 on which the office building is located.

9. The working hours at the office building are from 9:00 A.M. to 5:00 P.M., Monday through Friday. Approximately five employees work in the office building.

10. One executive board meeting is held on the first Saturday of each month between the hours of 10:00 A.M. and 2:00 P.M. Approximately fifteen persons attend this meeting. The applicant also holds membership meetings approximately four times a year. The attendance at these meetings approximates 110 persons.

11. The parking spaces of the subject lot are in an open area and are located in their entirety within 200 feet of the area to which they are accessory.

12. All areas devoted to driveways, access lanes and parking areas are paved with materials which form an all-weather, impervious surface.

13. The parking lot is designed so that no vehicle or any part thereof projects over any lot line or building line.

14. No vehicular entrance or exit is located within twenty-five feet of a street intersection.

15. Any lighting that is used to illuminate the parking lot is so arranged that all direct rays of lighting are confined to the parking lot.

16. In accordance with BZA Order No. 10426, the applicant provided a seven foot buffer with landscaping next to the abutting residential property on Lots 15 and 16 and a cedar fence on the easterly side of the buffer.

17. After the decision of the Board in Application No. 13005, and prior to the decision of the Court of Appeals, the applicant, in response to the requests of surrounding

property owners, installed a chain link fence around the lot and a gate at the entrance.

18. Aside from the gate and fence, the Board finds that the conditions and circumstances for operation of the subject parking lot have not changed since the Board's initial approval of establishment of the lot in 1970.

19. The parking area, including the landscaping, is kept free of refuse and debris and is maintained in a neat and orderly fashion. The applicant employs a yard service company to maintain the lot, and several employees and a janitor collect trash daily.

20. It is impractical and unsafe to locate the parking spaces on Lot 8 since the frontage of property along Bladensburg Road, N.E. at the subject location is strip zoned and the C-2-A zoning depth is only fifteen feet along Evarts Street, N.E.

21. The curb cut access to the parking lot and the fourteen foot wide aisle between the rows of parking spaces required by Section 7206.5 of the Zoning Regulations lie entirely on Lot 7 in the R-1-B District, while the required parking spaces for the office building under Section 7202.1 lie entirely on Lot 8 in the C-2-A District. Therefore, relying solely on Lot 8 for parking spaces prohibits aisleway access to such parking spaces.

22. The parking spaces are so located and all facilities in relationship thereto are so designed that they are not objectionable to adjoining property owners because of noise, traffic or other objectionable conditions. Properties to the north and east of the site are buffered by a brick wall and a fence. The residential house to the west of the lot is buffered by a wooden fence, plantings and a six-foot high chain link fence. Due south of the site is a small triangular-shaped traffic median and other commercial uses.

23. The subject parking lot is used exclusively for parking by the employees, members and visitors of the Bakers Union. A "No Trespassing" sign is posted on the site and the lot is locked at night.

24. Two letters of opposition were written and filed by an adjoining landowner. The basic objections to the continuation of accessory parking on the subject site were that the applicant promised to repair the owner's property; that there were police reports indicating frequent burglaries of the adjoining property which the owner attributed to access through the lot; that the site is used by children, loiterers and drug addicts; and that the fence

and gate constructed by the applicant are too short to protect the property.

25. A petition from seven individual property owners in opposition to the lot expressed similar concerns. It specifically noted that the triangular construction of the gate allowed any person to jump over or crawl under it and enter the lot. As to this specific issue, the Board will condition the grant to remedy this situation.

26. The applicant submitted copies of correspondence and a computer printout from the 5th District of the Metropolitan Police Department which indicated that there had been no reports filed concerning the subject site for the prior six months. The Board finds that the adjoining landowner's allegation of weekly burglaries was not substantiated by the Police Department's evidence.

27. The applicant's business manager testified that no one is allowed to use the lot other than for accessory parking purposes. Neighborhood children had been warned about using the lot as a play area. The business manager stated that he had only seen children playing on the lot once in the last years.

28. The fence surrounding the site is forty-two inches in height and the driveway gate is forty-one inches in height. The applicant stated that along with the "No Trespassing" sign, the gate and fence serve as notice that trespassing is prohibited. The applicant intends to install a chain link double gate so that children will not be able to crawl underneath it.

29. A letter in support of Application No. 13005 from the Sheet Metal Workers Local Union No. 100 of 2705 Bladensburg Road, N.E. was submitted April 5, 1982. The letter stated that the building and surrounding grounds of the subject property have been maintained in an excellent manner and that the accessory parking would benefit the neighborhood.

30. No written report was filed by Advisory Neighborhood Commission 5A and no representative appeared at the hearing.

31. No parties in opposition appeared and testified at the hearing.

CONCLUSIONS OF LAW AND OPINION:

Based on the record, the Board concludes that the applicant is seeking a special exception, the granting of which requires proof through substantial evidence that the applicant has complied with the requirements of

Paragraph 3101.410 of the Zoning Regulations and that the relief can be granted as in harmony with the general purpose and intent of the Zoning Regulations and will not tend to affect adversely the use of neighboring property. The Board concludes that the applicant has met its burden of proof. The circumstances have not changed since the Board's prior approval, except that a chain link fence has been constructed around the lot and a gate has been installed in response to the requests of surrounding property owners. These changes have made the lot more secure.

As evidenced, the use of residential Lot 7 for accessory parking is necessary for the applicant to efficiently meet the requirements for adequate parking for its office building located on C-2-A zoned land. The Board concludes that the applicant has fulfilled its responsibilities in maintaining and protecting the subject lot and preventing any adverse impact upon the neighborhood. Further, the applicant has sufficiently addressed all of the legitimate concerns of the property owners in opposition to the lot.


Based on the record of the application made at the rehearing, the Board concludes that continuing the use of the lot will not adversely affect neighboring properties. The Board further concludes that the application is in harmony with the general purpose and intent of the Zoning Regulations, thereby meeting the requirements of Sub-section 8207.2. Accordingly, it is ORDERED that BZA Order No. 13005, dated June 27, 1980, denying the application is hereby VACATED and the application is GRANTED SUBJECT to the following CONDITIONS:

- A. Approval shall be for a period of FIVE YEARS from the expiration date of the previous Order of approval, namely from June 25, 1979.
- B. The existing gate shall be replaced with a gate of chain link material to match the existing fence. The gate shall be designed and constructed so as to prevent children and animals from crawling through.
- C. All areas devoted to driveways, access lanes, and parking areas shall be maintained with a paving of material forming an all-weather impervious surface.
- D. Bumper stops shall be erected and maintained for the protection of all adjoining buildings.
- E. No vehicle or any part thereof shall be permitted to project over any lot or building line or on or over the public space.

- F. All parts of the lot shall be kept free of refuse or debris and shall be paved or landscaped. Landscaping shall be maintained in a healthy growing condition and in a neat and orderly appearance.
- G. No other use shall be conducted from or upon the premises and no structure other than an attendant's shelter shall be erected or used upon the premises unless such use or structure is otherwise permitted in the zoning district in which the parking lot is located.
- H. Any lighting used to illuminate the parking lot or its accessory building shall be so arranged that all direct rays of such lighting are confined to the surface of the parking lot.

VOTE: 4-1 (Walter B. Lewis, Douglas J. Patton, William F. McIntosh and Charles R. Norris to GRANT; Connie Fortune OPPOSED to the Motion).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:   
STEVEN E. SHER  
Executive Director

FINAL DATE OF ORDER: AUG 31 1982

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF LICENSES, INVESTIGATIONS AND INSPECTIONS.

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



Application No. 13005 of Bakers Local Union, No. 118, pursuant to Sub-section 8207.2 of the Zoning Regulations, for a special exception under Sub-paragraph 3101.410 to continue accessory parking in an R-1-B District at the premises 2706 Bladensburg Road, N.E., (Square 4345, Lot 7).

HEARING DATE: August 15, 1979  
DECISION DATE: November 7, 1979

FINDINGS OF FACT:

1. The subject lot 7 is located on the north side of Evarts Street between 30th Street and Bladensburg Rd., N. E. The subject lot 7 is to the west of an office building on lot 8 for which it provides accessory parking. Both lots are known as 2706 Bladensburg Rd., N.E. Lot 7 is in an R-1-B District. Lot 8 is in a C-2-A District.

2. In BZA Order No. 10476, dated November 16, 1970, the Board first approved the subject lot 7 as accessory parking for the applicants office building. In BZA Order No. 11592, dated June 25, 1974, the Board granted the continued use of the subject lot for a period of five years.

3. BZA Order No. 10476 required that the applicant provide a seven foot buffer with landscaping next to the abutting residential property on lots 15 and 16 and a cedar fence on the easterly side of the buffer.

4. The subject site, lots 7 and 8, are approximately 12, 708 square feet in area. Lot 7 is within thirty-five feet from the office building to which it is accessory. Lot 7 has parking facilities for fifteen automobiles.

5. The applicant testified that lot 7 was in compliance with all provisions of Article 74 of the Zoning Regulations.

6. The frontage of property along Bladensburg Road, N.E. at the subject location is strip zoned. The depth of the C-2-A zoning is fifteen feet along Evart Street, N.E.

7. Both lots 7 and 8 are of restrictive size and the adjacent property to the north is in adverse ownership and unavailable for off-street parking.

8. The intersection of Evert Street and Bladensburg Rd., N.E. forms an irregular angle at the subject property, lots 7 and 8, which gives an unusual shape to lot 8 on which the office building is located.

9. The working hours at the office building are from 9:00 a.m. to 5:00 p.m., Monday through Friday. Approximately five employees work in the office building.

10. One executive board meeting is held on the first Saturday of each month between the hours of 10:00 a.m. and 2:00 p.m. Approximately fifteen persons attend this meeting. The applicant also holds membership meetings approximately four times a year. The attendance at these meetings approximates 110 persons.

11. Three parties whose property face on the subject parking lot appeared at the public hearing in opposition to the application. Three letters from property owners within 200 feet of the subject property were submitted to the record at the public hearing as in opposition to the application. The general grounds of the opposition were that the applicant had turned the subject parking lot into a playground and hangout where children and adults gathered resulting in litter accumulations, noise from shouting and offensive language, noise from the use of bikes and motor scooters, alleged use of dope and alleged planning to break into neighboring homes. All of this resulted in many calls to the police department. The more specific grounds from the opposition who testified at the public hearing were the breaking and entering into their homes, the taking of personal property and broken windows. One neighbor testified that the applicant had not lived up to its promise to extend its screening fence along the rear lot line of her property which she testified to as a side lot line of the subject parking lot. Another neighbor testified that since the excavation on the subject lots for the construction of the office building and the parking lot, there has been erosion of the soil of her rear yard creating a severe slope causing damage to her home, her chain fence and her rear yard. She further testified that the applicant's fence to the rear of her property was constructed on the excavation line and accordingly, is not five feet high but some three feet. She further testified that



there was a hole in the fence of some two years and that as a result the children go through this gap in the fence or climb over other parts of the fence and go on to her property. She further complained that the chain fence across the lot even when it is not broken is of such a height that the children can step over it onto the lots. There were no objections raised to the use of the lot by the applicant or its employees.

12. The applicant in rebuttal testified that the hole in the fence had been repaired but the fence was destroyed again by the children. The applicant had permitted the use of the lot to the children to provide a safe place for the children off the streets. When he had attempted to preclude the children from using the lot further damage was done to the property. He further testified that there were no motorscooters used on the lot but rather skateboards, bicycles and basketballs. As to the issue of the extension of the fence along the rear lot line of the neighbor's property the applicant testified that the proposed extension would be on property that was not owned by the applicant but by the Amoco gas station. As to the excavation and the alleged damage to another neighbor's property this issue as to liability was now in court. The applicant further testified that the lot that is trespassed through the hole in the fence belongs to the applicant and not the objectant.

13. The single member district ANC-5A13 testified at the public hearing. At the request of the Board the recommendations were reduced to writing and submitted as the recommendations of ANC-5A. The recommendations were as follows:

"1. That the Baker's Local Union #118 be given the special exception to continue accessory parking at the premises 2706 Bladensburg Rd., N.E. only with the following conditions attached:

(a) That the lot be secured with a chain or gate that will be locked whenever the building is closed for business.

(b) That the existing light which illuminates the lot at night be repaired, a protective cover for the bulb be added and that it be kept lit every night.

(c) That the privilege given to the neighborhood children to use the lot area to play on be rescinded and the lot be posted "No Trespassing."

(d) That immediate repair of the fence adjacent to Mrs. Morgan's property be made.

(e) That the 5th District Police Department be on notice that the lot is not to be used for any purpose after closing hours.

2. In our opinion, it is more beneficial to the immediate residents and the Union that the parking lot remain in operation with the responsibility of its maintenance and use resting with the Union. If the application is denied, then the lot remains without the necessary management and oversight."

14. The applicant agreed to meet the conditions imposed by the ANC. By letter of August 27, 1979 counsel for the applicant advised the Board and the objectors as follows:

(a) Chaining of fence after business hours - The chain, lock and posts required to chain off the lot are already in place and the applicant will reinstitute its prior practice of chaining off the lot after business hours.

(b) Repair of lighting fixture - As was stated at the public hearing, the lighting fixture was damaged during a recent thunderstorm. The replacement fixture was ordered August 22, 1979 and is expected to be installed by August 30, 1979.

(c) Posting of no trespassing sign - The applicant posted a "no trespassing" sign on the premises on the afternoon of August 15 and has specifically told neighborhood children they have no authority to play on the lot.

(d) Repair of fence - As noted in the testimony at the public hearing, the applicant has previously repaired the fence on two occasions in the past. However, at this time the vandalism to the fence was of such a degree that the existing lumber could not be reused and new pieces were required to be ordered. The applicant, therefore, signed a contract for the required lumber from Long Fence Company on August 22, 1979 and expects repair work to be completed by August 31, 1979.

(e) Notification of the police department - The applicant on the afternoon of August 15, notified personnel of the 5th District Police Department that the lot is not to be used for any purpose after closing hours.

15. The Board deferred a decision on this application at its public meeting of September 5, 1979 to provide an opportunity for the opposition to review the written recommendation of ANC 5A and the written response of the applicant to the ANC's recommendations. At the public meeting of October 3, 1979, the Board further deferred a decision to its October 3, 1979 public meeting in order to review the entire record.

16. On September 18, 1979 the Office of the Zoning Secretariat requested the Office of the Building and Zoning Administration of DHCD to clarify with Mrs. Ruth Washington, one of the objectants, as to any violations or corrective actions concerning the fence on which she had proposed the aforementioned extension, that should be taken on either her part or on the part of the Amoco Oil Company.

17. The Board is required by statute to give great weight to the issues and concerns of the ANC. The Board agrees with the ANC that it would appear to be more beneficial to the immediate residents and the applicant that the parking lot remain in operation with the responsibility of its maintenance and use resting with the applicant. However it is the Board's finding that the present management has had sufficient time to address itself to the concerns of the immediate neighbors and has failed to do so. The applicant was well aware that it had allowed the children to use the lot. In fact it encouraged it in order to protect its property. The applicant was well aware of the destruction to its own property in terms of damaged fences and litter. It permitted its property to remain unrepaired and littered. Such actions reflect a lack of responsibility on the part of the applicant. A special exception for the use of the lot as accessory parking was first granted in 1970 and continued to date. The prior applications evidence the early concerns of the citizens. The Board finds that the applicant permitted the concerns of the neighbors to grow and deepen while the applicant did little to ameliorate their concerns. This Board cannot predict that the applicant would be more responsive in the future regardless of the remedial measures it now proposes.

CONCLUSIONS OF LAW:

Based on the record the Board concludes that the applicant is seeking a special exception under Sub-paragraph 3101.410 of the Zoning Regulations. In addition to meeting the requirements of Sub-paragraph 3101.410 the applicant has the burden of proof in establishing that the special exception can be granted as in harmony with the general purpose and intent of the Zoning Regulations and that the use will not tend to affect adversely the use of neighboring property in accordance with said Zoning Regulations and Maps. Sub-paragraph 3101.4104 also requires that the parking spaces are so located and facilities in relation thereto are so designed that they are not likely to become objectionable to adjoining or nearby property because of noise, traffic or other objectionable conditions. Finding of Fact No. 11 evidences an adverse affect on the use of neighboring property and that the present use of the property is objectionable because of noise and other objectionable conditions. The Board concludes that it is not sufficient for the applicant to forget about the parking lot use after the end of the normal working hours. The applicant has a twenty-four hour responsibility to the neighborhood. The applicant cannot indirectly license the use of its property as a playground and hangout for sixteen hours of the day. The prior applications had been granted as a special exception. The use of the subject lot was not a matter-of-right. The applicant has not met its responsibilities. It has not satisfied the requirements of the Zoning Regulations.

The Board has addressed the concerns of the ANC in Finding No. 17. ACCORDINGLY, for the above reasons, the application is DENIED.

VOTE: 3-0 (Charles R. Norris, William F. McIntosh, Leonard L. McCants to deny, Chloethiel Woodard Smith and Ruby B. McZier not present, not voting).

BY ORDER OF THE D. C. BOARD OF ZONING ADJUSTMENT

Application No. 13005  
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ATTESTED BY:

Steven E. Sher  
STEVEN E. SHER  
Executive Director

FINAL DATE OF ORDER: 17 MAR 1980

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT".

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



Application No. 13005, of Bakers Local Union, No. 118, pursuant to Sub-section 8207.2 of the Zoning Regulations, for a special exception under Sub-paragraph 3101.410 to continue accessory parking in an R-1-B District at the premises 2706 Bladensburg Road, N.E., (Square 4345, Lot 7).

HEARING DATE: August 15, 1979

DECISION DATE: November 7, 1979

FINAL DATE OF ORDER: March 17, 1980

DISPOSITION: Application DENIED by a vote of 3-0  
(Charles R. Norris, William F. McIntosh  
and Leonard L. McCants to deny; Chloethiel  
Woodard Smith and Ruby B. McZier not present,  
not voting).

FINDINGS OF FACT:

1. This application was heard on August 15, 1979 and decided November 7, 1979. During the interim period, the Board requested the applicant and the opposition to meet and discuss their differences.

2. There were exchanges of letters between the applicant, the Advisory Neighborhood Commission and the opposition. The applicant agreed to meet the conditions imposed by the ANC and introduced remedial measures. The opposition remained adamant and reiterated all its concerns as expressed at the public hearing.

3. In its Finding of Fact No. 17 of its Final Order, the Board found that since the inception of the subject parking lot on November 16, 1970, the neighbors expressed concerns and the subject applicant did little to ameliorate their concerns and that the Board could not predict that the applicant would be more responsive in the future.

4. On March 28, 1980, the applicant filed a timely motion for reconsideration which was served on all the parties. At the request of the applicant, who stated that he was attempting to meet with the opposition, the Board deferred a determination of this motion until its public meeting of June 5, 1980. On June 3, 1980 the applicant again requested a further postponement of a determination of the motion until the Board's public meeting of July 2, 1980 on the grounds that some of the opposition were not available.

CONCLUSIONS OF LAW:

Based upon the entire record, including the motion and the Final Order of the Board. The Board concludes that the applicant has presented no evidence that was not thoroughly heard and considered at the public hearing and addressed in its Final Order. The Board reaffirms that the relief sought is through a special exception. The use of the lot for accessory parking is not a matter of right and can be granted only upon a determination that the relief will not affect adversely the use of neighboring property. This lot has been used since 1970. Throughout its period of renewals, there has always been basic opposition to its use. The applicant has had constant notice of the objections of the residents and has done little about it. The Board further concludes that it has committed no error in deciding the application. It is therefore ORDERED that the Motion for Reconsideration, Rehearing or in the alternative Reargument is DENIED.

As to the applicant's request for a postponement on the determination of the Motion, the Board notes that this is the second request. A period of over two months has elapsed since the date of the Final Order. The Board concludes that there is nothing to be gained by postponing its determination of the Motion. At some reasonable time there must be finality to the Board's Order and that time has been reached. Accordingly, the request to defer a determination on the Motion is DENIED.

VOTE: 3-0 (Charles R. Norris, Leonard L. McCants and William F. McIntosh to DENY Reconsideration and Postponement; Connie Fortune and John G. Parsons not voting, not having heard the case).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY: Steven E. Sher  
STEVEN E. SHER  
Executive Director

FINAL DATE OF ORDER: 27 JUN 1980

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."